IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8155 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAPILABEN SHANABHAI KHODABHAI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner No. 1

MR RM CHAUHAN, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 03/09/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 02.4.2003 passed by the Police Commissioner, City of Baroda, against him, in exercise of powers under Section 3(1) of

the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 02.4.2003.

2. The grounds of detention served upon the petitioner and placed on record reveal that in passing order of detention which is impugned in this Special Civil Application, the detaining authority took into consideration two aspects of the matter, firstly, the four offences registered against the petitioner under the Bombay Prohibition Act, and secondly, in-camera statements of two witnesses recorded by the proposing authority on 30.3.2003 and verified by the detaining authority on 1.4.2003. It is further noticed that on 11.3.2001, on 31.8.2001, on 10.7.2002 and on 13.3.2003 before Makarpura Police Station, four offences registered against the petitioner under Sections 66(b), 65(e) etc. for the possession of country liquor under the Bombay Prohibition Act, while unreported incidents, for which the statements are recorded, reveal the incidents of 14th of March, 2003 and 18th of February, 2003. The witness, narrating the incident of 8th of February, 2003, stated that while on that day he was standing near a temple at Makarpura Police Station, was called by the petitioner and petitioner told that the witness was offering information to the Police about his activities in dealing with the country liquor. On refusing allegation, the petitioner started beating the witness and the persons from vehicles passing nearby, the shopkeepers of the surrounding area were gathered, but the petitioner and her associates with the weapons like knives, etc. rushed towards the crowd and there was commotion amongst them. The traffic was disrupted and terror was created. While the other witness narrating the incident of 14.3.2003 stated before the proposing authority that while witness was passing through Marble Chokadi, the petitioner along with her companions called the witness and asked him to hand over his scooter to the petitioner because the petitioner wanted more vehicles for transporting illegal liquor on occasion of Holy. When this demand was refused, witness was beaten by the petitioner and like the earlier incident, the shopkeepers of surrounding area, the persons who were passing in vehicles and other persons passing from there gathered, but the petitioner and her associates with knives, etc. ran towards them and there was commotion amongst the crowd and the crowd was dispersed due to fear of the petitioner and her

associates and they created terror around the area. On relying this material, the detaining authority declared the petitioner to be a "bootlegger" and the order impugned came to be passed.

3. Learned Advocate Mrs.Subhadra G. Patel, for the petitioner and learned AGP. R.M. Chauhan were heard at length. Learned AGP placed on record an affidavit-in-reply of the detaining authority which is also taken into consideration.

4. Though various contentions raised on behalf of the petitioner and controverted by the AGP, to decide this Special Civil Application, the contention raised on behalf of the petitioner that from the facts on record, it could be said that the detaining authority reached to correct subjective satisfaction that the public order was affected or was likely to be affected by the activities of the detenu. It was urged that the crimes registered against the petitioner are under the Bombay Prohibition Act and it could not be said that the public order was affected prejudicially on account of registration of crimes. It was also contended that the two unreported incidents narrated in the grounds by the detaining authority are nothing but individual quarrel and can be taken care of by maintenance of law and order and could not be said to be the incidents any way affecting prejudicially to the maintenance of public order. While leaned AGP controverting stated that in both the incidents the crowd was gathered, and the same was threatened, according to the witnesses with the weapons like knife by the petitioner and her associates. The petitioner and her associates created terror and there was boomerang among the crowd, which came to be dispersed on account of fear of the petitioner and her associates. The traffic was disrupted and the life of the locality was also affected, according to the statements. The learned AGP further stated that it is clear that this suggests only conclusion that by the activities of the petitioner, the maintenance of public order was affected.

5. Having heard both the sides and having regard to the very object of the PASA Act, the maintenance of public order and maintenance of law and order is required to be discussed minutely. The activity of an individual may or may not be disturbing by public order or disturbing law and order. It depends upon the nature of the activities. The fallout and the extent and reach of the alleged activities to be the activities prejudicial to the maintenance of public order must be of such a nature that such activities must be travelling beyond the

capacity of the ordinary law to deal with the activities must be so subversive as to be affecting the community at large or a large section of society, to be the activity prejudicial to the maintenance of public order. Therefore, it is always the degree of disturbance and its impact upon the social life or the impact even upon the tempo of life of society or the people of a locality determine whether the disturbance caused by such activity amounts to only a breach of law and order or it amounts to breach of public order. Examining the facts of this case, two aspects which the detaining authority took into consideration are, registration of crimes and incamera statements of the witnesses. The registration of crimes under the Bombay Prohibition Act, in the facts and circumstances of the case, by no stretch of reasoning, can be said to be disturbing the public order, or even the public health suffers, and such a subjective satisfaction is reached by the detaining authority. It is seen from the grounds that a general statement that has been made by the detaining authority that consuming liquor is injurious to health, and except that, the registration of crime against the petitioner, is how affecting the public order is totally missing from the grounds, as has been considered by the detaining authority to detain the petitioner. So far as the second aspect of the material relied upon by the detaining authority is concerned, irrespective of the fact that, the detaining authority exercised discretion under Section 9(2)of the PASA Act, even if, the statements are taken on its face value, there is nothing in those statements which cannot be taken care of by ordinary law or the activities shown in the statements are not to that extent, which would affect the tempo of life or society at large so as to prejudicial to the maintenance of public order. These are cases, at the most, may be taken care of under maintenance of law and order. Therefore, on this ground, the subjective satisfaction of the detaining authority is vitiated on account of non-application of mind to this aspect and the impugned order in this petition deserves to be quashed and set aside.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Baroda City, on 02.4.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if she is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

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